

**Vermont Bar Examination  
July, 2012  
Question 3**

The Selectboard of the Town of Mergens has come to you, the municipal attorney, with a problem and several proposed responses. For the past 50 years, volunteers from a local church, with the financial support from several main-street businesses, have erected a Christian nativity scene on the Town-owned green in the weeks leading up to Christmas. Because the roughly half-acre green is in the center of the Town, passengers of virtually any vehicle passing through the Town see the large wooden structure and religious statues. This is especially true of the brightly lit display at night, but this lighting has been considered necessary for public safety during the annual Town-organized caroling event that takes place on the green on the Sunday before Christmas. Many have remarked how much darker the streets appear on December 26, when the volunteers remove the display.

Pierre, a Mergens resident, recently appeared before the Selectboard to complain that the nativity scene violates his constitutional rights as a committed atheist. He asks the Selectboard not to allow further displays. The Selectboard members are divided about what to do, and seek your legal opinion on the following options:

- (a) doing nothing, because the Town does not pay for the nativity scene;
  - (b) placing a sign near the nativity scene stating that the Town does not endorse Christianity, but is committed to allowing the scene to continue as part of a longstanding civic tradition;
  - (c) placing a menorah, Santa Claus, or other symbols near the nativity scene, and keeping the multi-symbol display up until January 2 of each year; and
  - (d) enacting a local ordinance banning all unattended displays, or all unattended religious displays, on the Town green.
1. Analyze each of these responses under the relevant constitutional law. Identify additional information that would be helpful to your analysis.
  2. Briefly explain to the Selectboard what legal action Pierre could bring to challenge the constitutionality of the display.

**Question 4**

Ann and Brad are partners in a lucrative widgets business, A&B Widgets. Ann is also a licensed attorney who practices law on a full-time basis. Brad runs A&B Widgets on a full-time basis. Per Ann and Brad's partnership agreement, Ann does not draw a salary from the partnership, but Brad draws a yearly salary. Further, according to the partnership agreement, after accounting for all expenses, Ann and Brad share their net profits and losses on a 50/50 basis. For the previous five years, the partnership has

made distributions to Ann and Brad. They expect a distribution from A&B Widgets for the 2011 tax year, as well.

Ann prepares her own taxes. For the past five years, Brad has had his taxes prepared by his attorney, David, who is also an accountant. In February 2012, Brad drops off his paperwork to David. Unbeknownst to Brad, included in his paperwork is an e-mail he received from Ann. It reads:

From: Ann

To: Brad

Date: Jan. 31, 2012

Subject: Tax Info for A&B Widgets

Brad—

Attached is the list of “expenses” I came up with that we can use to pad our yearly business expenses. Let me know what “expenses” you come up with so we can figure out our business income and our distributions for 2011. Maybe you can adjust the “expenses” you came up with for the 2010 tax year (say, by an increase of 10%)? We need to get this done ASAP so we can finalize our taxes. Thanks.

—Ann

1. How is partnership income, such as Ann and Brad’s income from A&B widgets, reported and taxed? Discuss.
2. Discuss what tax and professional responsibility issues, if any, are raised by Ann’s e-mail
  - a. For Ann;
  - b. For Brad;
  - c. For David.
3. Discuss the tax implications if Ann and Brad were to convert their partnership to a C corporation.
4. Discuss the professional responsibility implications for David if A&B Widgets had been a C corporation at the time David received Ann’s email.

### Question 5

At 11:30 p.m. on July 1, the Smalltown, Vermont police department Dispatcher received a 911 call. The caller told Dispatcher that she could hear a fight going on in Apartment 3A between her neighbors, Dick

and Jane. During the phone call, Dispatcher heard in the background a man yelling, "Come back here now!" followed by a woman yelling, "Please don't hit me again."

At 11:35, Officer Adams arrived at Apartment 3A. Jane answered the door. She had swelling around her right eye and was crying slightly. Jane calmly told Officer Adams that her husband, Dick, had gotten angry at her because she had arrived home late, the argument escalated, and Dick had punched her in the face and then left the apartment. Jane also provided a sworn written statement that contained the same information that she had orally told the Officer.

Officer Adams also spoke to Dick and Jane's teenage son Tom. Tom said that he was at home but did not witness the assault. Tom did say that he had seen his father slap his mother on three different occasions in the past six months.

Dick was arrested the next day and charged with domestic assault in Vermont Superior Court, Criminal Division.

Prior to trial, Dick's defense attorney asked the prosecutor for a copy of a recording of the 911 call. The prosecutor reported that the Officer had listened to the call and the prosecutor had asked for a copy of the recording, but the recording system subsequently broke and erased the only copy of the call. Due to the lost recording, defense counsel filed a *Brady* motion with the Court. The Court denied the motion.

Also prior to trial, the prosecutor filed a notice of her intent to introduce at trial Tom's testimony concerning the prior assaults.

At trial, the prosecutor first called Dispatcher to the stand. Over defense counsel's objection, the Court permitted Dispatcher to testify about the statements Dispatcher overheard during the 911 call.

The prosecutor next called Officer Adams to the stand to recount the events of July 1. The prosecutor attempted to elicit from the officer the account of the incident that Jane had given him and to have Jane's written statement admitted. Defense counsel objected, and the Court sustained the objection.

After Officer Adams' testimony, the prosecutor called Jane to the stand. Jane testified that she and Dick had a history of arguing. However, Jane denied that Dick had hit her. The prosecutor then attempted to confront Jane with her written statement. Defense counsel objected, and the Court sustained the objection.

Finally, the prosecutor called Tom to the stand. Over the defense's objection, the Court allowed Tom to testify about the prior assaults.

1. Was the Court correct in denying defense counsel's *Brady* motion for the failure of the prosecutor to produce a copy of the 911 call? Discuss.
2. Was the Court correct in allowing the prosecutor to elicit from Dispatcher the statements Dispatcher overheard during the 911 call? Discuss.
3. Were the Court's two rulings with regard to Jane's written statement correct? Discuss.
4. Was the Court correct in ruling that the prosecutor could elicit from Tom testimony regarding prior assaults? Discuss.

### Question 6

At the time of his death, Dan (a lifelong Vermonter) was married to Wilma. Dan's prior marriage to Flo ended in divorce. Two sons, Allen and Bob, were born to Dan's marriage with Flo. Dan and Wilma had no children, though Wilma has a daughter, Samantha, from her first marriage which also ended in divorce.

In 2005, while married to Wilma, Dan executed a valid will leaving his entire estate to Allen and Bob, in equal shares. In 2007 Dan began to suffer from dementia, which condition became progressively worse. By 2009, Dan could no longer recognize his family members and moved to a Nursing Home.

In January 2010, Dan began receiving an experimental drug to treat his dementia. The drug was initially effective. By the middle of that month Dan began to recognize his family members and was able to enjoy some of his old hobbies, including stamp collecting. During the last week in January, Samantha spent a week with Dan. Samantha was also a stamp collector. They spent a large part of the week going over their stamp collections.

By the middle of February Dan's condition had worsened rapidly. Dan died in May of 2010.

After Dan's death, his lawyer produced a will dated January 28, 2010. That will left specific bequests in the amount of \$20,000.00 each to both Allen and Bob. The remainder of the estate, valued in excess of \$1,000,000.00, is given to Samantha. The 2010 will contains Dan's signature and that of 4 witnesses, including Samantha. The 2010 will makes no mention of any prior will executed by Dan.

A probate proceeding has commenced in Vermont to administer Dan's Estate.

1. Discuss and analyze the validity of the 2005 and 2010 wills.
2. Discuss and analyze the claims or challenges that can be made by Allen and Bob in the probate proceeding.
3. Discuss and analyze the claims that can be raised by Wilma in the probate proceeding.